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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,141	09/08/2003	Johannes Schmid	032498-016	8660

21839 7590 10/27/2005

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EXAMINER	
TRAN, KHOI H	

ART UNIT	PAPER NUMBER
3651	

DATE MAILED: 10/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/656,141	SCHMID, JOHANNES	
	Examiner	Art Unit	
	Khoi H. Tran	3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *RCE 09/12/2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 May 2005* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

KHOI H. TRAN
PRIMARY EXAMINER

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The request filed on 09/12/2005 for a Request For Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 10/656,141 is acceptable and a RCE has been established. An action on the RCE follows.

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the drive unit on the valves of the supply pipes for supplying the substances to a container must be shown or the features canceled from the claim 6. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5, 13, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not distinct as to which values represent the "reference and actual" values. Antecedent bases for reference value and actual value have not been developed within the claim language.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1, 6, 7, 10, 11, 14-16, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Dirksing et al. 6,516,245.

Dirksing et al. '245 disclose a device for mixing substances and method of operating said device for mixing substances per claimed invention. The mixing device 130 comprises a processor unit having local memory for storing mixing formula (Figures 2A and 2C). The processor comprises input means for transferring information to the processor. The processor controls the drive unit and valves (measuring devices) for dispensing appropriate amount of substances to be mixed (Figures 2C and 2D) based on the information provided via input means. The device comprises a display unit (LCD, not shown, but figuratively represented as reference 90 in Figure 1, and column 4 last paragraph) for displaying a dispensing formula/product to a user. The device comprises a measuring device (i.e. valves) by which portions of substances in quantities determined according to a mixing formula are filled into a container. The processor unit is connected to a communication module for establishing a wireless connection to a data server, i.e. the Internet (column 4, lines 50-54, column 5, first paragraph). The mixing formula can be transmitted to the memory unit from said data server (Figure1). The formula can be manually adjusted to accommodate user's preference. The mixing formula can be filled manually or automatically based on user's input. Dirksing '245 processor connects to a data server (any device that provides data to the processor) for a time period regularly or as needed based on user's predetermined inputs. Dirksing et

al. '245 comprise memory for storing previously selected mixing formula (Figure 1, blocks 40 and 50). The stored selection can be visualized on the display unit (i.e. LCD and reference 90 in Figure 1) for manual adjustment of the pre-selected formula.

In regards to claim 11, when a new formula is introduced to the device 130 it is interpreted to be a new mixing formula. When an existing formula is modified by a user, it is a modifying formula replacing the existing formula.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 2-4, 9, 12, 17, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dirksing et al. 6,516,245.

In regards to claims 2 and 3 Dirksing '245 discloses all elements per claimed invention. However it is silent as to the specific of the wireless communication module operates according to a mobile radio protocol or/and according to at least one wireless Local Area Network protocol.

As pointed out from Applicant's specification and the filed Information Disclosure Statement, wireless communication having mobile radio protocol and/or Wireless Local Area Network protocol (W-LAN) are commonly well known.

It would have been obvious for a person with ordinary skill in the art at the time the invention was made, to have provided mobile radio protocol and/or W-LAN protocol

for Dirksing '245 wireless communication network because it facilitates a well-known wireless communication protocol for the network.

In regards to claim 4, Dirksing '245 discloses all elements per claimed invention. However it is silent as to the specific of the communication module operates using at least Wireless Application Protocol (WAP) and a Hypertext Transfer Protocol (HTTP).

As pointed out from Applicant's specification and the filed Information Disclosure Statement, WAP and HTTP protocols are commonly well known for providing communication protocols within an Internet environment.

It would have been obvious for a person with ordinary skill in the art at the time the invention was made, to have provided WAP and HTTP protocols for Dirksing '245 wireless Internet communication network because it facilitates well-known communication protocols for the Internet network.

In regards to claim 9, it obvious that the display unit and the input unit could be combine to form an integrated unit. Such modification is commonly well known (i.e. LCD having graphical user interfaces).

In regards to claims 12 and 19, it is obvious that the updating of data in the local memory takes place a) before a start of a mixing process; b) at a predefined or at selectable time intervals; c) in response to manual control, or; d) in response to being initiated by the data server from the Internet.

Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dirksing et al. 6,516,245 in view of Muscara

Dirksing '245 discloses all elements per claimed invention as explained in the above paragraphs. However, it lacks a scale.

Muscara '268 discloses a mixing device having a scale 17. Muscara '268 teaches that the scale provides accurate measurement of dispensed and mixed product within a receiving container.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided to Dirksing '245 with a scale because it facilitates the accurate measuring of dispensed and mixed substances within said mixing device, as taught by Muscara '268.

Claim Rejections - 35 USC § 103

8. Claims 1-4, 6, 7, 9-12, 14-17, 19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neas et al. 6,793,387.

Neas et al. '490 disclose a device for mixing color substances. The device comprises a processor unit 17A having a local memory to store mixing formula, an interactive display/input unit 16A, and a measuring/dispensing system 17B. The device comprises a wireless communication module for connecting the processor to a data server 25, to a wide area network (WAN), or to an Internet network (column 5, lines 37-67). Inputs for controlling the dispensing/mixing of substances by the device could be provided by touch screen 16A manually, by downloaded from the data server, the WAN, or the Internet onto the processor and the local memory unit. It is obvious that the

inputs to the processor and the memory unit would include mixing formula information in order for the device to properly control the amount of desired mixing substances.

In regards to claims 2 and 3, it is obvious that Neas et al. '490 wireless communication module would have to operate according to at least one wireless local area network protocol in order for the communication network to adhere to the current industry's communication standards and/or the US FCC regulations. In addition, as pointed out from Applicant's specification and the filed Information Disclosure Statement, wireless communication having mobile radio protocol and/or Wireless Local Area Network protocol (W-LAN) is commonly well known.

In regards to claim 4, it is obvious that Neas et al. '490 processor unit, when connecting to the Internet, would comprise a browser that operates using a Hyper text Transfer Protocol because such standard protocol is commonly well known within the industry, as pointed out in Applicant's specification and the filed Information Disclosure Statement.

In regards to claim 6, Neas et al. '387 processor acts on a drive unit on the valves of the supply pipes for supplying the substances to a container (Figure 1).

In regards to claims 7, 14, 16, 17, and 21 it is obvious that the mixing formula is selected and called up from at least the memory unit 25 to affect the dispensing/mixing of the substances.

In regards to claims 10 and 11, Neas et al. '387 device regularly or as needed creates wireless communication connections to the data server. Each time a mixing formula is inputted to the processor for the controlling of the dispensing/mixing process,

it is considered to be an up-to-date data/information. For example, a new mixing formula replacing the previous mixing formula is obviously an up-to-date mixing formula.

In regards to claims 12 and 19, it is obvious that the new up-to-date mixing formula would have to be inputted to the processor prior to the mixing process.

9. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neas et al. 6,793,387 in view of Haaser et al. 5,938,080.

Neas et al. '387 disclose all elements per claimed invention as explained above. However, it is silent as to the specifics of displaying reference and actual values of the substances for manual adjustment of the mixing formula.

Haaser et al. '080 disclose a color mixing device wherein the mixing process is controlled via a processor. The device comprises a scale integrated into the device for measuring and controlling of the mixing substances. The device comprises display 190 (Figures 1 and 12) for showing reference and actual values of the mixing formula or substances. Haaser et al. '080 teach that manual adjustment of the mixing formula or substances could be done after the displayed of the reference and actual values.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have displayed the reference and actual values of the mixing substances on Neas et al. '387 display 16A for manual adjustment thereof because it facilitates manual customization of mixing formulae, as taught by Haaser et al. '080.

In regards to claims 8 and 18, Neas et al. '387 disclose all elements per claimed invention as explained above. However, it is silent as to the specifics of integrated a scale into the device,

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided to Neas et al. '387 device with a scale because it facilitates another measuring means for mixing substances, as shown by Haaser et al. '080.

Response to Arguments

10. Applicant's arguments filed 08/10/2005 have been fully considered but they are not persuasive.

Applicant repeatedly argued that Dirksing et al. '245 do not disclose the inputting of "formula" into the microprocessor. This argument is not persuasive. It is the Office position that the entering of customer's selection (i.e. numeric value that represents the color and the type of cosmetic product, color slide selector, keyboard, and mouse etc...) constitutes one form of inputting a formula.

Applicant argued that Dirksing et al. '245 do not teach connecting of the processor unit of the mixing device to a data server for a certain time. This argument is not persuasive. Per paragraph 5 above, Dirksing '245 processor is wirelessly connected to a data server for a certain time, e.g. regularly or as needed per customer's predetermined control, for the transmission of mixing data to the processor.

Conclusion

11. Additional references made of record and not relied upon are considered to be of interest to applicant's disclosure: see attached USPTO Form 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H. Tran whose telephone number is (571) 272-6919. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit 3651

KHT
10/24/2005